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5                   UNITED STATES DISTRICT COURT  
6                   WESTERN DISTRICT OF WASHINGTON  
7                   AT SEATTLE

8                   MARILYN L. PRICE,

9                   Plaintiff,

10                  v.

11                  NANCY A BERRYHILL, Acting Commissioner  
12                  of Social Security,

13                  Defendant.

14                   CASE NO. C17-5149-BAT

15                   **ORDER FOR EAJA FEES AND  
16                  EXPENSES**

17                  Plaintiff Marilyn L. Price, the prevailing party in this Social Security disability appeal,  
18                  moves under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412, for an award of  
19                  attorney’s fees of \$6,989.58, as well as expenses of \$5.81. Dkt. 19. The Commissioner opposes  
20                  the motion, arguing that no fees should be awarded because her position was substantially  
21                  justified. Dkt. 20. The Court rejects the Commissioner’s arguments and **GRANTS** plaintiff’s  
22                  motion.

23                  The EAJA authorizes payment of attorney’s fees to a prevailing party in an action against  
24                  the United States, unless the court finds that the government’s position on the merits in the  
25                  litigation was “substantially justified.” 28 U.S.C. § 2412(d)(1)(A). To show that its position was  
26                  “substantially justified” the government must demonstrate that its position had a reasonable basis  
27                  in both law and fact at each stage of the proceedings, including both the government’s litigation  
28                  position and the underlying agency action giving rise to the civil action. *Tobeler v. Colvin*, 749

1 F.3d 830, 832–34 (9th Cir. 2014).

2       The Commissioner attempts to reframe the issue as “whether the Commissioner’s  
3 position was substantially justified despite the evidence that the Appeals Council decided to  
4 exclude from the record.” Dkt. 27 at 2. However, the “position of the United States” includes  
5 *both* the government’s litigation position and the underlying agency action giving rise to the civil  
6 action. *Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2014). The Commissioner does no more than  
7 argue that she was right in her litigation position and the Court was wrong in deciding the case.  
8 The Court does not relitigate the underlying decision in deciding EAJA fee motions.

9       The Commissioner misleadingly asserts that this Court has recently considered a  
10 factually analogous situation and sided with the Commissioner. Dkt. 29 at 2. However, the case  
11 the Commissioner refers to, *Holster v. Berryhill*, Case No. C17-5578-BAT, involved a request  
12 for remand under sentence six of 42 U.S.C. § 405(g), which entails no substantive evaluation of  
13 the ALJ’s decision. This case involves a request for remand under sentence four of 42 U.S.C.  
14 § 405(g), which requires an evaluation of the merits of the ALJ’s decision in light of the new  
15 evidence. The Court found that the ALJ’s decision was no longer supported by substantial  
16 evidence in light of the new evidence. The cases are not factually analogous and the Court’s  
17 decision in *Holster* does not support the Commissioner’s litigation position in this case.

18       The Commissioner’s positon in this litigation was not substantially justified. The Court  
19 therefore **GRANTS** Ms. Price’s motion (Dkt. 19).

20       The Commissioner did not object to the amount of fees Ms. Price requested. The Court  
21 has reviewed Ms. Price’s motion and supporting declarations and the record, and finds the  
22 amount requested is reasonable. The Court therefore **ORDERS**:

23       Plaintiff is hereby awarded EAJA fees of \$6,989.58 and expenses in the sum of \$5.81. If

1 the U.S. Department of the Treasury determines that Plaintiff's EAJA fees, expenses, and costs  
2 are not subject to offset allowed under the Department of the Treasury's Offset Program (TOPS),  
3 then the check for EAJA fees, expenses, and costs shall be made payable to plaintiff's attorney  
4 Eitan Kassel Yanich at his address: Eitan Kassel Yanich, PLLC, 203 Fourth Avenue E., Suite  
5 321, Olympia, WA. 98501.

6 DATED this 5th day of February, 2018.

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9 BRIAN A. TSUCHIDA  
10 United States Magistrate Judge  
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